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TOPCON MEDICAL SYSTEMS, INC. and
TOPCON HEALTHCARE SOLUTIONS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND COURTHOUSE

CARL ZEISS MEDITEC, INC.,

Plaintiff,

vs.

TOPCON MEDICAL SYSTEMS, INC.,
TOPCON HEALTHCARE SOLUTIONS,
INC., TOBIAS KURZKE, GREG
HOFFMEYER, GENEVIEVE FAY,
KATALIN SPENCER, KEITH BROCK,
CHARLES GUIBORD, JR., JOSEPH
CICCANESI, MELISSA GOEKE, AND
DOES 1-50,

Defendants.

Case No. 4:19-cv-04162 SBA

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PLAINTIFF’S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PURSUANT TO CIVIL LOCAL RULE 7-11**

Date: September 11, 2019
Time: 2:00 p.m.
Place: Oakland Courthouse
Before: Hon. Sandra Brown Armstrong

Action Filed: July 19, 2019
Trial Date: None Set

Pursuant to Northern District of California Local Rule 7-11(b), Defendants Topcon Medical Systems, Inc. and Topcon Healthcare Solutions, Inc. (collectively referred to as “Topcon”) hereby oppose the Motion to Seal with respect to Exhibit I to the Declaration of Anita

Burton of Plaintiff Carl Zeiss Meditec, Inc. (“Plaintiff”).¹ Plaintiff has not shown a compelling reason to support its Motion to Seal, and therefore the Court should deny it.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action arises from Plaintiff’s allegation that its former employees misappropriated its trade secrets by working for its competitor, Topcon. In support of its Motion for Preliminary Injunction, Plaintiff filed Exhibit I to the declaration of its Vice President of Human Resources, Anita Burton, under seal. Exhibit I is a February 2019 email thread among Topcon employees, and discusses a presentation given by Plaintiff’s Head of Global Diagnostics, Angelo Rago, at an industry symposium. Said another way, the information discussed in Exhibit I is based on information Topcon employees learned of in an open forum during Mr. Rago’s public presentation.

Plaintiff’s Motion to Seal fails to identify how the content of this email thread is a trade secret. Indeed, the email thread does not include any software, source code, data, formula, specifications, drawings, workflows, screenshots, mockups, product road maps, application notes, or any other information that would traditionally qualify for trade secret protection. Further, absent a showing that the email thread contains a trade secret, Plaintiff also fails to provide any compelling reason to support sealing it. No harm would flow from disclosing the contents of the email thread because there is no confidential information or trade secrets in it that would undermine Plaintiff’s competitive advantage. Therefore, Topcon respectfully requests that this Court deny Plaintiff’s Motion to Seal.

II. LEGAL ARGUMENT

A party must show a compelling reason supporting a motion to seal. (*See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).) Under this stringent standard, a

¹ While Topcon’s opposition does not address Exhibits A-H of Plaintiff’s Motion to Seal, Topcon does not support sealing the redacted portions of those Exhibits. Exhibits A-H contain form Employment Agreements, and Plaintiff does not provide any compelling reason for sealing the redacted portions of those Employment Agreements.

1 court may seal records only when it finds “a compelling reason and articulate[s] the factual basis
2 for its ruling, without relying on hypothesis or conjecture.” (*Id.* at 1178-79.) The court must then
3 “conscientiously balance[] the competing interests of the public and the party who seeks to keep
4 certain records secret.” (*Id.* (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135
5 (9th Cir. 2003)).) That which constitutes a “compelling reason” is “best left to the sound
6 discretion of the trial court.” (*Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101
7 (9th Cir. 2016) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 599 (1978)).)
8 Examples of “compelling reasons” to seal a document include those instances when a court
9 record might otherwise be used to “gratify private spite or promote public scandal” or “as sources
10 of business information that might harm a litigant’s competitive standing.” (*Id.*)

11 Here, there is no compelling reason to seal Exhibit I. In conclusory fashion, Plaintiff
12 vaguely describes Exhibit I as purportedly containing Plaintiff’s “trade secrets” and “confidential
13 information.” However, Exhibit I is an email thread among Topcon employees discussing public
14 information that was presented by Plaintiff’s Head of Global Diagnostics, Angelo Rago, at an
15 industry symposium on February 21, 2019. The email does not discuss any trade secrets or
16 confidential information of Plaintiff’s but, rather, simply provides an opinion about the contents
17 of Mr. Rago’s public presentation. This email does not contain protected information and should
18 not be sealed.

19 An email thread discussing publicly known information presented by Plaintiff at an
20 industry symposium cannot possibly be used as a vehicle for improper purposes. If made public,
21 the contents of Exhibit I would not harm Plaintiff’s competitive standing, because Plaintiff
22 already voluntarily disclosed it to the public, and, in any case, the email does not contain any
23 proprietary processes or techniques developed by Plaintiff. If the Court seals Exhibit I, Topcon
24 would be prejudiced in opposing Plaintiff’s Motion for Preliminary Injunction, which is based
25 on the alleged “trade secrets” discussed in the e-mail.

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1 **III. CONCLUSION**

2 For the reasons explained above, Topcon respectfully requests that the Court deny
3 Plaintiff's Motion to Seal. A Proposed Order granting the requested relief is submitted herewith.
4

5 Dated: August 1, 2019

Respectfully submitted,

6 FISHER & PHILLIPS LLP

7 By: /s/ Jason A. Geller

8 JASON A. GELLER

9 BAILEY K. BIFOSS

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Attorneys for Defendants

10 TOPCON MEDICAL SYSTEMS, INC.; and

11 TOPCON HEALTHCARE SOLUTIONS, INC.
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